

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4293 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 No.

DHARAMSINHBHAI LILABHAI DESAI

Versus

DISTRICT MAGISTRATE

Appearance:

MR VIJAY H PATEL for Petitioner

MR. HL JANI AGP for the Respondents Nos. 1, 2 and 4.

MR. BT RAO, ADDL STANDING COUNSEL for respondent No.3.

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 05/08/98

ORAL JUDGEMENT

The petitioner, who is detained by an order dated 16-4-98 passed by the District Magistrate, Patan, under Section 3 (2) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (hereinafter referred to as "the Act"), has filed

this petition under Article 226 of the Constitution of India challenging the legality and validity of the said order of detention. The District Magistrate, Patan has recorded a subjective satisfaction that with a view to preventing the detenu from acting in any manner prejudicial to the maintenance of supplies of commodities essential to the community, it is necessary to detain the detenu under the said Act and has passed the order of detention.

Since this petition is required to be allowed on the first ground advanced by Mr. Patel that the detenu was supplied with illegible documents with the result, he could not make an effective representation to the concerned authorities against the order of his detention and, therefore, the continued detention of the detenu is vitiated, it is not necessary for me to refer to and deal with the other grounds of challenge and the allegations made in the grounds of detention.

Mr. Patel invited my attention to page 21 of the compilation of documents supplied to the detenu which is xerox copy of the different cash memos issued by the detenu to the customers. Having perused the same, I am of clearly of the view that none of the contents, including the name, is legible. Mr. Jani, learned Assistant Government Pleader appearing for the respondents has also conceded this position. In view of this factual position, I am clearly of the view that by supplying illegible document to the detenu, the detaining authority has infringed the fundamental rights guaranteed under Article 22(5) of the Constitution of India and, therefore, his continued detention has become illegal.

In the result, this petition is allowed. The order of detention dated 16-4-98 is quashed and set aside. The detenu Dharamsibhai Lilabhai Desai is ordered to be released forthwith if not required in connection with any other offence. Rule is made absolute accordingly with no order as to costs.

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